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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

KRAVITZ, SCHNITZER, SLOANE &
JOHNSON, CHTD.,

Plaintiff,

v.

ASTA FUNDING, INC., et al.,

Defendants.

2:10-CV-486 JCM (PAL)

ORDER

Presently before the court is defendant Palisades Collection, LLC's objection to plaintiff's proposed order. (Doc. #77). Plaintiff Kravitz, Schnitzer, Sloane & Johnson, Chtd. filed a reply to the objection. (Doc. #80).

On July 18, 2011, the court held a hearing on plaintiff's motion for partial summary judgment (doc. #43), motion for summary judgment (doc. #58), supplemental motion for partial summary judgment (doc. #67), and amended motion to dismiss (doc. #72). (Doc. #73). All parties were present at the hearing.¹ During the hearing, the court stated that it was inclined to grant the motions, but allowed the parties to argue as they saw fit. (Doc. #73 Minutes of Proceedings). At the conclusion of the oral arguments, the court held that it was not persuaded to change its position, and ordered the plaintiff to prepare an appropriate "proposed order/judgment." (Doc. #73). Neither party expressed a confusion or concern regarding the court's ruling.

¹ "MINUTES OF PROCEEDINGS - Motion Hearing held on 7/18/2011 before Judge James C. Mahan. Crtrm Administrator: Melissa Jaime; Pla Counsel: Tyler Watson; Gary Schnitzer; Def Counsel: Edward Coleman; Court Reporter/FTR #: Joy Garner; Time of Hearing: 10:00 - 10:15 a.m.; Courtroom: 6A;" (Doc. #73).

1 Subsequently, plaintiff prepared a proposed order and emailed it to the defendant's counsel.
 2 (Doc. #80 Exhibit 1). In the email, plaintiff asked defendant's counsel to "please review the attached
 3 proposed [o]rder..." Additionally, plaintiff stated that if counsel did not receive a response by Friday
 4 morning, July 22, 2011, it would assume that "there are no disputes as to the form and content of the
 5 order," and it would submit it for judicial signature. After not receiving a response or objection to
 6 the proposed order, plaintiff filed the proposed order with the court (doc. #75). Upon review of the
 7 order, the court signed the proposed order (doc. #78) and entered judgment in plaintiff's favor (doc.
 8 #79).

9 Following the plaintiff's submitting the proposed order, defendant filed an objection to it.
 10 (Doc. #77). In defendant's objection, it begins by asserting that according to the minute order (doc.
 11 #73), "no definitive decision has been made." Specifically, the defendant argues that the court was
 12 "inclined" to grant the motions, but that the minute order "does not set out the granting of the
 13 particular [m]otions," and "does not clarify that the [p]laintiff's [m]otion to [d]ismiss is not a motion
 14 to dismiss the case, but a [m]otion to [d]ismiss [c]ounterclaims filed by [d]efendant." Additionally,
 15 defendant contends that many of the findings in the proposed order "were not discussed or agreed
 16 to or [o]rdered by the [j]udge."

17 As a preliminary concern, defense counsel Mr. Coleman's paralegal conveyed in an email
 18 to plaintiff that he "barely understood what Judge Mahan was saying during the hearing." (Doc. #80
 19 Exhibit 3). However, Mr. Coleman attended the hearing, was given an opportunity at that time to
 20 address any concerns or confusions he had, and yet failed to do so. Moreover, he was given the
 21 opportunity by the plaintiff to review and object to the proposed order granting the motions prior to
 22 the filing of the order. Therefore, Mr. Coleman was well aware that the court did in fact rule on the
 23 motions and specifically order the plaintiff to prepare an order/judgment.² Further, whether or not
 24 granting the motion to dismiss dismissed the entire case or not, is not an issue. The granting of the
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26 ² In the minutes of proceedings, it states "[t]he Court gives its preliminary inclination to grant 43 Plaintiff's
 27 Motion for Partial Summary Judgment; 58 Plaintiff's Motion for Summary Judgment; 67 Plaintiff's Supplemental Motion
 28 for Partial Summary Judgment and 72 Plaintiff's Amended Motion to Dismiss and hears arguments of counsel.
 ORDERED: Counsel for Plaintiff shall prepare and file a proposed order/judgment." (Doc. #73).

1 summary judgment motions ended the case and warranted final judgment.

2 Defendant also argues that specific “findings” in the proposed order (doc. #75) were not
3 actually addressed by the court. For example, the defendant argues that plaintiff was never the
4 attorney of record for defendant (finding no.4) and that plaintiff never provided “legal collection
5 services” on behalf of the defendant (finding no. 5). However, as the court granted the motions for
6 summary judgment, and those findings, and the other disputed findings, came directly from the
7 motions, the court did not need to specifically address each factual finding at the hearing. By
8 granting the motions, the court implicitly found the facts in the motions to be true.

9 Finally, defendant argues with regards to the motion to dismiss the malicious prosecution
10 claim, that plaintiff’s finding no. 19 was not “a finding of the [c]ourt nor a [f]act which has been set
11 out by this [c]ourt.” (Doc. #77). In no. 19 of the proposed order (doc. #75), plaintiff asserted that the
12 dismissal of the defendant’s malicious prosecution claim was warranted because “[d]efendant has
13 not, and will not, obtain a favorable termination of the litigation.” The defendant cannot possibly
14 argue that this is not an accurate statement. The court ruled on the motions for summary judgment
15 *in favor of plaintiff*. Therefore, defendant could not also obtain a favorable termination of the
16 litigation.

17 As demonstrated above, none of defendant’s objections warrant vacating the court’s order
18 (doc. #78) or the judgment in favor of plaintiff (doc. #79).

19 Accordingly,

20 IT IS HEREBY ORDERED ADJUDGED AND DECREED that defendant Palisades
21 Collection, LLC’s objection to plaintiff’s proposed order (doc. #77) be, and the same hereby is,
22 DENIED.

23 DATED August 3, 2011.

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26 **UNITED STATES DISTRICT JUDGE**
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